

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Melissa Marie Martz
Debtor

Case No.11-55938-PJS
Chapter 13
Honorable Phillip J Shefferly

Melissa Marie Martz

Plaintiff

Adv. Proc. No.11- pjs

v.

Bank of America

Defendant

**COMPLAINT TO AVOID SECURITY INTEREST IN REAL PROPERTY
LOCATED AT 35966 SOMERSET ST, WESTLAND MI 48186**

Debtor, by and through her attorneys, Marrs & Terry, PLLC, now comes and states the following complaint:

1. Plaintiff brings this complaint pursuant to 11 U.S.C. §506, and submits herself to jurisdiction of this Court through Fed. R. Bankr. P §7001 and §7004.
2. Debtor filed a Voluntary Chapter 13 petition with this court on June 7, 2011.
3. The Debtor has two separate mortgages on her principle residence located at 35966 Somerset St, Westland MI 48186 located in Wayne County. Said property is legally described as:

City of Westland, County of Wayne, State of Michigan;

Lot 140, BRIGHT MEADOWS SUBDIVISION, according to the recorded plat thereof, Liber 86, Page 47, Wayne County Records.

Tax Id: 56-057-040-140-000

CKA 35966 Somerset St, Westland MI 48186

4. The first mortgage is now held by Bank of America and has a balance of \$127,815.00 according to the Debtor's schedules which were based on a recent credit report balance. Said mortgage is recorded at Liber 36771 Page 447, Wayne County Records.

The second mortgage is now held by Bank of America. Said mortgage has a balance of \$28,834.00 as evidenced by the Debtor's schedules. Said mortgage is recorded at Liber 36771 Page 458, Wayne County Records.

5. The property has a value of \$94,660.00 according to Debtor's schedules and a recent market analysis.
6. In order for Defendant's mortgage to be secured by even \$1, the property would have to be of value in excess of the first mortgage and any outstanding property taxes, which is no less than \$127,815.00.
7. The Debtor is entitled to avoid the claimed security interest of Bank of America as to the second mortgage on the Debtor's property under the provisions of 11 U.S.C. §506, as the Defendant's second mortgage lien is not an "allowed secured claim" as defined by the Code and applicable case law.
8. As such, the Defendant does not have a valid lien or security interest as to the second mortgage on the property at 35966 Somerset St, Westland MI 48186 in Wayne County and should therefore be treated as a general unsecured creditor whose claim will be paid as a Class 8 creditor.
9. The interests of good faith and justice support the requested relief.

WHEREFORE, Debtors request that this Honorable court grant the requested relief to avoid Bank of America's security interest and lien in the real estate located at 35966 Somerset St, Westland MI 48186 in Wayne County as it relates to the second mortgage.

Respectfully Submitted,

Dated: June 7, 2011

____/s/Tricia Stewart Terry____
TRICIA STEWART TERRY (P59522)
Marrs & Terry, PLLC
6553 Jackson Rd
Ann Arbor MI 48103
734-663-0555
TTerry3272@aol.com